

000237

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

2800676

102

4/22

TO: CITY ATTORNEY 2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY 3. DATE: March 3, 2008

4. SUBJECT: AGREEMENT WITH LATHAM & WATKINS LLP. - AFCSME LOCAL 127 AND SAN DIEGO MUNICIPAL EMPLOYEES' ASSOCIATION VS. CITY OF SAN DIEGO

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Todd Bradley - 533-6173 MS 59 6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Lawrence Tomanek - 236-6220 MS59 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	See attached				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					Authorize the City Comptroller to allocate and expend up to \$675,000 from the Public Liability Fund.
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT	\$675,000				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	LIAISON	SC	4/9/08	8	CFO	MARY LEWIS	4/3/08
2				9			
3	PUSH MEAT	[Signature]	3-7-08	10	CITY ATTORNEY	LARRY TOMANEK	3/8/08
4				11	ORIG. DEPT	KAREN HUGHES	3/3/08
5	AUDITOR	[Signature]	3/27/08	DOCKET COORD: [Signature] COUNCIL LIAISON SC 4/9/08			
6	FM	[Signature]	3-10-08	COUNCIL PRESIDENT [Signature] <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: COUNCIL DATE: 4/22/08			
7							

11. PREPARATION OF: ☒ RESOLUTIONS ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Approve the Resolution to authorize the City Attorney to execute an agreement not to exceed \$675,000 between the city of San Diego and Latham & Watkins LLP for employment law legal services as Outside Counsel for the sole purpose of representing the City in AFCSME Local 127 and San Diego Municipal Employees' Association vs. City of San Diego, Public Employment Relations Board, Case No. LA-CE-352-M.

Authorize the City Auditor and Comptroller to allocate the cost using the FY2008 FTE Cost Allocation Table.

Authorize the City Auditor and Comptroller to allocate and expend an amount not to exceed \$675,000 per attached schedule.

11A. STAFF RECOMMENDATIONS:

APPROVE THE RESOLUTION

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c) (3)

HOUSING IMPACT:

OTHER ISSUES:

EXECUTIVE SUMMARY SHEET

DATE ISSUED: March 3, 2008

REPORT NO.:

ATTENTION: COUNCIL PRESIDENT AND COUNCILMEMBERS

ORIGINATING DEPARTMENT: City Attorney on behalf of Mayor's Office

SUBJECT: Contract with Latham & Watkins for Employment Law services – Public Employment Relations Board legal services in the matter: *AFSCME Local 127 and San Diego Municipal Employees' Association v. City of San Diego*

COUNCIL DISTRICT(S): ALL

CONTACT/PHONE NUMBER: Todd Bradley, Deputy City Attorney/533-5795
Lawrence Tomanek, Chief Deputy City Attorney/236-6220

REQUESTED ACTION:

Authorize the City Attorney on behalf of the Mayor's Office to execute an Agreement on behalf of the City of San Diego to engage Latham & Watkins LLP as Outside Counsel for the sole purpose of representing the City in *AFSCME Local 127 and San Diego Municipal Employees' Association vs. City of San Diego*, Public Employment Relations Board, Case No. LA-CE-352-M, challenging the implementing ordinances for two charter amendments – Proposition B, voter approval required for pension increases and Proposition C, managed competition for certain City services – passed in the November 2006 elections.

Approve the Resolution to authorize the City Attorney to execute an agreement not to exceed \$675,000 between the city of San Diego and Latham & Watkins LLP for employment law legal services as Outside Counsel for the sole purpose of representing the City in *AFSCME Local 127 and San Diego Municipal Employees' Association vs. City of San Diego*, Public Employment Relations Board, Case No. LA-CE-352-M.

STAFF RECOMMENDATION:

Approve the Resolution

EXECUTIVE SUMMARY: \$675,000 has been approved for this matter in Closed Sessions to date. The City has been invoiced approximately \$501,000 through December 31, 2007.

In the Closed Session Meeting of March 6, 2007, the City Council voted on Item CS-5, *AFSCME Local 127 v. City of San Diego*, Unfair Practice Charge No. LA-CE-352-M, to authorize the City Attorney to hire Latham & Watkins for an amount not to exceed \$50,000 to be paid from unallocated reserves. The motion was made by Councilmember Frye and seconded by Councilmember Faulconer. The motion passed 7 to 0 with Councilmember Atkins recused.

In the Closed Session Meeting of September 4, 2007, the City Council voted on Item CS-5, *AFSCME Local 127 v. City of San Diego*, Unfair Practice Charge No. LA-CE-352-M, to authorize an increase in outside counsel, Latham & Watkins, fees up to \$250,000. The

motion was made by Council President Pro Tem Young and seconded by Council President Peters. The motion passed 7 to 0 with Councilmember Faulconer absent.

In the Closed Session Meeting of January 22, 2008, the City Council voted on Item CS-3, *AFSCME Local 127 v. City of San Diego*, Unfair Practice Charge No. LA-CE-352-M, to authorize an additional \$375,000 to defend the case at trial and if needed, the P.E.R.B. Appeal Hearing. The motion was made by Councilmember Frye and seconded by Councilmember Madaffer. The motion passed 6 to 0 with Councilmember's Faulconer and Atkins absent.

FISCAL CONSIDERATIONS:

The City shall compensate Latham & Watkins LLP based on its hourly rates for consulting services. This Agreement has a cumulative not-to-exceed amount of \$675,000. Using the FY2008 FTE Cost Allocation Table, up to \$498,825 will be borne by the General Fund and up to \$176,175 will be borne by the Enterprise Funds.

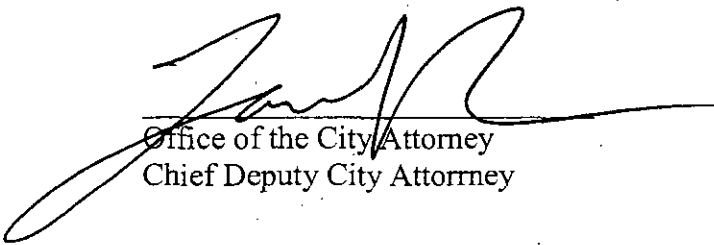
PREVIOUS COUNCIL and/or COMMITTEE ACTION: This is the initial request for approval of services for the above listed matter. The firm of Latham & Watkins LLP previously has provided employment law and advisory services to the City.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

The City and its efforts to implement Propositions B and C
Latham & Watkins LLP



Office of the City Attorney
Chief Deputy City Attorney

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

000241

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC

2800676

DEPT.

NO.

45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$675,000.00

Vendor: Latham & Watkins, LLP

Purpose: Approve the Resolution to authorize the City Attorney to execute an agreement for employment of law legal services as Outside Counsel for the sole purpose of representing the City in AFCSME Local 127 and SD MEA vs. City of SD, PERB. Authorize the Comptroller to allocate the cost based on the FTE table, and to expend an amount not to exceed \$675,000.

Date: March 28, 2008 By:  3/28/08

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
		SEE	ATTACHED							\$675,000.00
TOTAL AMOUNT										\$675,000.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC

2800676

2008 FTE Allocation W/O MADS

Total Amount of AC/DP/Invoice:

\$ 675,000.00

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	81140	82240	Public Liability		4151		73.90%	498,825.00
002	0	41400	730	Golf Course	100	4151	002150	0.89%	6,007.50
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	472.50
004	0	41200	751	Waste Reduction & Enforcement	1002	4151	001500	0.35%	2,362.50
005	0	41200	752	Refuse Disposal	1000	4151	000110	0.77%	5,197.50
006	0	41200	753	Resource Management	010	4151	002000	0.16%	1,080.00
007	0	41200	754	Collection Services	020	4151	004229	0.08%	540.00
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.15%	1,012.50
009	0	41210	757	Collection Services	020	4151	004229	0.98%	6,615.00
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	202.50
011	0	41210	759	Resource Management	010	4151	002010	0.12%	810.00
012	0	41500	760	Water	163	4151	000163	7.91%	53,392.50
013	0	41506	776	MWWD-Administration	795	4151	776260	8.51%	57,442.50
014	0	41100	720	Airports	2000	4151	001101	0.18%	1,215.00
015	0	50050	850	ECP-Water & Sewer Design	2000	4151	085010	1.12%	7,560.00
016	0	50050	5431	E&CP Water Wastewater Field Eng.	100	4151	543100	0.42%	2,835.00
017	0	41300	1300	Developmental Service Enterprise	1111	4151	001110	4.36%	29,430.00
TOTAL								100.00%	675,000.00

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO AN AGREEMENT WITH LATHAM & WATKINS LLP IN AN AMOUNT UP TO \$675,000 TO PROVIDE LEGAL SERVICES IN CONNECTION WITH THE DEFENSE OF AFCSME LOCAL 127 AND SAN DIEGO MUNICIPAL EMPLOYEES' ASSOCIATION VS. CITY OF SAN DIEGO, PUBLIC EMPLOYMENT RELATIONS BOARD AND AUTHORIZING THE AUDITOR AND COMPTROLLER TO EXPEND RELATED FUNDS

WHEREAS, In February 2007, AFCSME Local 127 [Local 127] filed an unfair practice charge with the Public Employment Relations Board [PERB], Case No. LA-CE-352-M, the San Diego Municipal Employees' Association [MEA] subsequently joined in the complaint, challenging the implementing ordinances for two charter amendments – Proposition B, voter approval required for pension increases and Proposition C, managed competition for certain City services – passed in the November 2006 elections; and

WHEREAS, the defense of the aforementioned case involves a highly specialized area of law; and

WHEREAS, the firm of Latham & Watkins LLP has the necessary skills and experience to assist the City in defense of this matter; and

WHEREAS, the Council of the City of San Diego has been briefed on the status of this matter in duly-noticed Closed Sessions on March 6, 2007, September 4, 2007, and January 22, 2008; and

WHEREAS, the Council determined to retain Latham & Watkins to assist the Mayor and the City Attorney in defense of this matter; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to retain Latham & Watkins LLP for the provision of legal services in *AFCSME Local 127 and San Diego Municipal Employees' Association vs. City of San Diego*, Case No. LA-CE-352-M, in an amount not to exceed \$675,000.

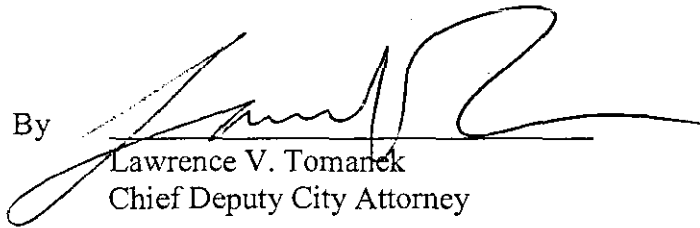
BE IT FURTHER RESOLVED, that the Auditor and Comptroller is authorized allocate the cost of the agreement using the fiscal year 2008 FTE Cost Allocation Table.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller is authorized to expend up to \$498,825 from the Public Liability Fund on this matter.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller is authorized to expend up to \$176,175 from the Enterprise Funds.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Lawrence V. Tomanek
Chief Deputy City Attorney

LVT:jdf
03/28/2008
04/15/08.COR.Copy
Or.Dept:CITY ATTY
R-2008-844

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor